

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

1 STARR DALTON,

Plaintiff,

v.

Case No. 2:08-cv-01153

W. VA. DIVISION OF CORRECTIONS,
DAVID BALLARD, Warden,
JIM RUBENSTEIN,
BRIAN GREENWOOD,
CO II ADAM CAYTON,
CPL. NATE KENDRICK, and
SGT. CURTIS DIXON,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

On October 7, 2008, Plaintiff filed a Complaint under 42 U.S.C. § 1983 alleging that, on March 10, 2008, he was punished without cause and without process (Complaint, docket # 2, at 5.) He alleges that he was assaulted by prison staff on March 5, 2008, and subsequently charged with violations of prison regulations as a coverup of the beating by staff. Id. Plaintiff contends that the disciplinary hearing was unfair, and that he was denied various rights, resulting in loss of good-time credits and privileges, and imposition of punitive segregation for 60 days. Id., at 6. Plaintiff's Complaint seeks expungement of his institutional record, restoration of his good-time credits, and monetary damages. Id., at 7.

Procedural History

Plaintiff applied to proceed without prepayment of fees and costs (# 1), which was granted, without imposition of an initial partial filing fee (# 5). Service of process issued, and summonses were served by the U.S. Marshals Service (## 8-15).

On January 26, 2009, the defendants filed a motion to dismiss (# 16), supported by a memorandum (# 17), asserting that the State agency defendant is not a "person" subject to suit under 42 U.S.C. § 1983, that the defendants are entitled to qualified immunity, that Heck v. Humphrey requires dismissal absent a showing that the disciplinary action was vitiated, and that defendants Rubenstein and Ballard are not subject to suit under a theory of *respondeat superior*. Plaintiff did not file a response to the motion to dismiss, although he is an experienced litigator.

Analysis - Heck v. Humphrey and Edwards v. Balisok

Plaintiff's Complaint alleges, in pertinent part, as follows [spelling corrected]:

On the 5th day of March, 2008, the defendants brought bogus charges against the plaintiff as a means to white-wash the brutality practiced against the plaintiff on that same day and to safeguard against the threat of civil action. A hearing for the bogus charge was scheduled for the 10th day of March, 2008. However, on March 10, 2008, the defendants did not allow for a meaningful hearing to be conducted and punished the plaintiff without giving him any opportunity to defend against the charge. Plaintiff had requested to have witnesses (who were staff members) attend the hearing and to confront and cross-examine his accuser. These rights were blatantly and strategically denied him. Plaintiff has also requested to have a legal representative at the

hearing. This right was also denied. The defendants instead had one of their inmate informants make incriminating statements against plaintiff while being tape recorded. This was an essential component of the plot to cover up the brutality inflicted prior. I, the plaintiff, 1Starr Dalton, will prove beyond the shadow of a doubt both in law and in fact of the substance of my claims that the defendants have violated my 8th and 14th amendment rights. * * * Upon finding the plaintiff guilty of assault at the mock hearing depicted hereinbefore the defendants stripped plaintiff of 730 days earned good-time credit and imposed 60 days loss of all privileges and 60 days punitive segregation. * * *

Plaintiff prays the court will order that the charge be expunged from his institutional record and that all good-time credits unlawfully stripped from him be restored. * * *

(# 2, at 5-7.)

To the extent that Plaintiff is claiming that his imprisonment (i.e., loss of good-time credits) is unconstitutional, his claim must be pursued through a writ of habeas corpus, not in a § 1983 claim. See Heck v. Humphrey, 512 U.S. 477 (1994) (§ 1983 plaintiff must prove that conviction or sentence has been reversed, expunged, or declared invalid in order to recover damages for unconstitutional imprisonment). In Edward v. Balisok, 520 U.S. 641, 646 (1997), the Supreme Court held that, in the context of prison disciplinary proceedings which result in the loss of good-time credits, challenges to prison hearing procedures which necessarily imply the invalidity of the judgment must be pursued in habeas corpus. A challenge to the validity of a prison disciplinary hearing based on alleged due process violations is simply not cognizable under 42 U.S.C. § 1983 and should be

dismissed. Id., at 649.

Plaintiff has not shown that his loss of good-time credits has been reversed, expunged or declared invalid by a prison official or by an order of a State court. Thus, the District Court should find that his § 1983 claim is barred. The undersigned proposes that the presiding District Judge **FIND** that Plaintiff has failed to show that his disciplinary proceeding has been declared to be invalid. It is respectfully **RECOMMENDED** that Defendants' motion to dismiss (# 16) be granted and this civil action dismissed without prejudice.

The parties are notified that this "Proposed Findings and Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have ten days (filing of objections) and three days (mailing) from the date of filing this "Proposed Findings and Recommendation" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendation" to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a

waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to the opposing parties, Chief Judge Goodwin and this Magistrate Judge.

The Clerk is directed to file this "Proposed Findings and Recommendation" and to mail a copy of the same to Plaintiff and counsel of record.

May 18, 2009

Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge